

REFERENCE TITLE: judges; merit selection; population

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

# SCR 1040

Introduced by  
Senator Gray C

## A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE VI, SECTIONS 12, 28, 30, 35, 37, 38, 40 AND 41, CONSTITUTION OF ARIZONA; RELATING TO THE JUDICIAL DEPARTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it resolved by the Senate of the State of Arizona, the House of Representatives concurring:

1. Article VI, sections 12, 28, 30, 35, 37, 38, 40 and 41, Constitution of Arizona, are proposed to be amended as follows if approved by the voters and on proclamation of the Governor:

12. Superior court; election of judges in counties with a population of less than seven hundred fifty thousand persons; appointment of judges in counties with a population of seven hundred fifty thousand persons or more; term of office

Section 12. A. Judges of the superior court in counties having a population of less than ~~two~~ SEVEN hundred fifty thousand persons according to the most recent United States census shall be elected by the qualified electors of their counties at the general election. They shall hold office for a regular term of four years except as provided by this section from and after the first Monday in January next succeeding their election, and until their successors are elected and qualify. The names of all candidates for judge of the superior court in such counties shall be placed on the regular ballot without partisan or other designation except the division and title of the office.

B. The governor shall fill any vacancy in ~~such~~ HAVING A POPULATION OF LESS THAN SEVEN HUNDRED FIFTY THOUSAND PERSONS by appointing a person to serve until the election and qualification of a successor. At the next succeeding general election following the appointment of a person to fill a vacancy, a judge shall be elected to serve for the remainder of the unexpired term.

C. Judges of the superior court in counties having a population of ~~two~~ SEVEN hundred fifty thousand persons or more according to the most recent United States census shall BE APPOINTED IN THE MANNER PROVIDED IN SECTION 37 OF THIS ARTICLE AND hold office for a regular term of four years except as provided by this article.

28. Justices and judges; dual office holding; political activity; practice of law

Section 28. Justices and judges of courts of record shall not be eligible for any other public office or for any other public employment during their term of office, except that they may assume another judicial office, and upon qualifying therefor, the office formerly held shall become vacant. No justice or judge of any court of record shall practice law during ~~his~~ THE JUSTICE'S OR JUDGE'S continuance in office, nor shall ~~he~~ THE JUSTICE OR JUDGE hold any office in a political

1 party or actively take part in any political campaign other than  
 2 ~~his~~ THE JUSTICE'S OR JUDGE'S own for ~~his~~ reelection or retention  
 3 in office. Any justice or judge who files nomination papers for  
 4 an elective office, other than for judge of the superior court  
 5 or a court of record inferior to the superior court in a county  
 6 having a population of less than ~~two~~ SEVEN hundred fifty  
 7 thousand persons according to the most recent United States  
 8 census, forfeits ~~his~~ THE JUSTICE'S OR JUDGE'S judicial office.

9 30. Courts of record

10 Section 30. A. The supreme court, the court of appeals  
 11 and the superior court shall be courts of record. Other courts  
 12 of record may be established by law, but justice courts shall  
 13 not be courts of record.

14 B. All justices and judges of courts of record, except  
 15 for judges of the superior court and other courts of record  
 16 inferior to the superior court in counties having a population  
 17 of less than ~~two~~ SEVEN hundred fifty thousand persons according  
 18 to the most recent United States census, shall be appointed in  
 19 the manner provided in section 37 of this article.

20 35. Continuance in office; continued existence of  
 21 offices; application of prior statute and rules

22 Section 35. A. All justices, judges, justices of the  
 23 peace and officers of any court who are holding office as such  
 24 by election or appointment at the time of the adoption of this  
 25 section OR ANY AMENDMENT TO THIS SECTION shall serve or continue  
 26 in office for the respective terms for which they are so elected  
 27 or for their respective unexpired terms, and until their  
 28 successors are elected or appointed and qualify or they are  
 29 retained in office pursuant to section 38 of this article;  
 30 ~~provided, however,~~ EXCEPT that any justice or judge elected at  
 31 the general election at which this section is adopted shall  
 32 serve for the term for which ~~he~~ THE JUSTICE OR JUDGE is so  
 33 elected. The continued existence of any office heretofore  
 34 legally established or held shall not be abolished or repealed  
 35 by the adoption of this article. The statutes and rules  
 36 relating to the authority, jurisdiction, practice and procedure  
 37 of courts, judicial officers and offices in force at the time of  
 38 the adoption of this article and not inconsistent herewith,  
 39 shall, so far as applicable, apply to and govern such courts,  
 40 judicial officers and offices until amended or repealed.

41 B. All judges of the superior court holding office by  
 42 appointment or retention in counties with a population of ~~two~~  
 43 SEVEN hundred fifty thousand persons or more according to the  
 44 most recent United States census at the time of the adoption of  
 45 this amendment OR ANY SUBSEQUENT AMENDMENT to this section shall

1 serve or continue in office for the respective terms for which  
 2 they were appointed. Upon an incumbent vacating the office of  
 3 judge of the superior court, whether by failing to file a  
 4 declaration for retention, by rejection by the qualified  
 5 electors of the county or resignation, the appointment shall be  
 6 pursuant to section 37 of this article.

7 37. Judicial vacancies and appointments; initial  
 8 terms; residence; age

9 Section 37. A. Within sixty days from the occurrence of  
 10 a vacancy in the office of a justice OF THE SUPREME COURT or A  
 11 judge of ~~any~~ AN INTERMEDIATE APPELLATE court of record, ~~except~~  
 12 ~~for vacancies occurring in the office of a judge of the superior~~  
 13 ~~court or a judge of a court of record inferior to the superior~~  
 14 ~~court,~~ the commission on appellate court appointments, ~~if the~~  
 15 ~~vacancy is in the supreme court or an intermediate appellate~~  
 16 ~~court of record,~~ shall submit to the governor the names of not  
 17 less than three persons nominated by it to fill such vacancy, no  
 18 more than two of whom shall be members of the same political  
 19 party unless there are more than four such nominees, in which  
 20 event not more than sixty ~~percentum~~ PER CENT of such nominees  
 21 shall be members of the same political party.

22 B. Within sixty days from the occurrence of a vacancy in  
 23 the office of a judge of the superior court or a judge of a  
 24 court of record inferior to the superior court except for  
 25 vacancies occurring in the office of a judge of the superior  
 26 court or a judge of a court of record inferior to the superior  
 27 court in a county having a population of less than ~~two~~ SEVEN  
 28 hundred fifty thousand persons according to the most recent  
 29 United States census, the commission on trial court appointments  
 30 for the county in which the vacancy occurs shall submit to the  
 31 governor the names of not less than three persons nominated by  
 32 it to fill such vacancy, no more than two of whom shall be  
 33 members of the same political party unless there are more than  
 34 four such nominees, in which event no more than sixty per ~~centum~~  
 35 CENT of such nominees shall be members of the same political  
 36 party. A nominee shall be under sixty-five years of age at the  
 37 time ~~his~~ THE NOMINEE'S name is submitted to the governor.  
 38 Judges of the superior court shall be subject to retention or  
 39 rejection by a vote of the qualified electors of the county from  
 40 which they were appointed at the general election in the manner  
 41 provided by section 38 of this article.

42 C. A vacancy in the office of a justice or a judge of  
 43 such courts of record shall be filled by appointment by the  
 44 governor without regard to political affiliation from one of the  
 45 nominees whose names ~~shall be~~ ARE submitted to ~~him as~~

~~hereinabove provided~~ THE GOVERNOR PURSUANT TO SUBSECTION A OR B.

In making the appointment, the governor shall consider the diversity of the state's population for an appellate court appointment and the diversity of the county's population for a trial court appointment, however, the primary consideration shall be merit. If the governor does not appoint one of such nominees to fill such vacancy within sixty days after their names are submitted to the governor by such commission, the chief justice of the supreme court forthwith shall appoint on the basis of merit alone without regard to political affiliation one of such nominees to fill such vacancy. If such commission does not, within sixty days after such vacancy occurs, submit the names of nominees ~~as hereinabove provided~~ PURSUANT TO SUBSECTION A OR B, the governor shall have the power to appoint any qualified person to fill such vacancy at any time thereafter prior to the time the names of the nominees to fill such vacancy are submitted to the governor ~~as hereinabove provided~~ PURSUANT TO SUBSECTION A OR B. Each justice or judge so appointed shall initially hold office for a term ending sixty days following the next regular general election after the expiration of a term of two years in office. Thereafter, the terms of justices or judges of the supreme court and the superior court shall be as provided by this article.

D. A person appointed to fill a vacancy on an intermediate appellate court or another court of record now existing or hereafter established by law shall have been a resident of the counties or county in which that vacancy exists for at least one year ~~prior to his~~ BEFORE THE PERSON'S appointment, in addition to possessing the other required qualifications. A nominee shall be under sixty-five years of age at the time ~~his~~ THE NOMINEE'S name is submitted to the governor.

38. Declaration of candidacy; form of judicial ballot, rejection and retention; failure to file declaration

Section 38. A. A justice or judge of the supreme court or an intermediate appellate court shall file in the office of the secretary of state, and a judge of the superior court or other court of record including such justices or judges who are holding office as such by election or appointment at the time of the adoption of this section OR ANY AMENDMENT TO THIS SECTION, except for judges of the superior court and other courts of record inferior to the superior court in counties having a population of less than ~~two~~ SEVEN hundred fifty thousand persons, according to the United States census, shall file in

1 the office of the clerk of the board of supervisors of the  
 2 county in which ~~he~~ THE JUSTICE OR JUDGE regularly sits and  
 3 resides, not less than sixty nor more than ninety days ~~prior to~~  
 4 BEFORE the regular general election next preceding the  
 5 expiration of ~~his~~ THE JUSTICE'S OR JUDGE'S term of office, a  
 6 declaration of ~~his~~ THE JUSTICE'S OR JUDGE'S desire to be  
 7 retained in office, and the secretary of state shall certify to  
 8 the several boards of supervisors the appropriate names of the  
 9 candidate or candidates appearing on such declarations filed in  
 10 ~~his~~ THE JUSTICE'S OR JUDGE'S office.

11 B. The name of any justice or judge whose declaration is  
 12 filed as provided in this section shall be placed on the  
 13 appropriate official ballot at the next regular general election  
 14 under a nonpartisan designation and in substantially the  
 15 following form:

16 Shall \_\_\_\_\_, (Name of justice or judge) of the  
 17 \_\_\_\_\_ court be retained in office? Yes \_\_\_ No \_\_\_ (Mark X  
 18 after one).

19 C. If a majority of those voting on the question votes  
 20 "No," ~~then~~, upon the expiration of the term for which such  
 21 justice or judge was serving, a vacancy shall exist, which shall  
 22 be filled as provided by this article. If a majority of those  
 23 voting on the question votes "Yes," such justice or judge shall  
 24 remain in office for another term, subject to removal as  
 25 provided by this constitution.

26 D. The votes shall be counted and canvassed and the  
 27 result declared as in the case of state and county elections,  
 28 whereupon a certificate of retention or rejection of the  
 29 incumbent justice or judge shall be delivered to ~~him~~ THE  
 30 INCUMBENT by the secretary of state or the clerk of the board of  
 31 supervisors, as the case may be.

32 E. If a justice or judge fails to file a declaration of  
 33 ~~his~~ THE JUSTICE'S OR JUDGE'S desire to be retained in office, as  
 34 required by this section, ~~then his~~ THE JUSTICE'S OR JUDGE'S  
 35 office shall become vacant upon expiration of the term for which  
 36 such justice or judge was serving.

37 40. Option for counties with less than seven hundred  
 38 fifty thousand persons

39 Section 40. Notwithstanding any provision of this article  
 40 to the contrary, any county having a population of less than ~~two~~  
 41 SEVEN hundred fifty thousand persons, ~~—~~ according to the most  
 42 recent United States census, ~~—~~ may choose to select its judges of  
 43 the superior court or of courts of record inferior to the  
 44 superior court as if it had a population of ~~two~~ SEVEN hundred  
 45 fifty thousand or more persons. Such choice shall be determined

by vote of the qualified electors of such county voting on the question at an election called for such purpose by resolution of the board of supervisors of such county. If such qualified electors approve, the provisions of sections 12, 28, 30, 35, ~~through 37, 38,~~ 39, 41 and 42 shall apply as if such county had a population of ~~two~~ SEVEN hundred fifty thousand persons or more.

41. Commission on trial court appointments;  
membership; terms

~~A. Except as otherwise provided, judges of the superior court in counties having a population of two hundred fifty thousand persons or more according to the most recent United States census shall hold office for a regular term of four years.~~

~~B.~~ A. There shall be a nonpartisan commission on trial court appointments for each county having a population of ~~two~~ SEVEN hundred fifty thousand persons or more according to the most recent United States census which shall be composed of the following members:

1. The chief justice of the supreme court, who shall be the chairman of the commission. In the event of the absence or incapacity of the chairman the supreme court shall appoint a justice ~~thereof~~ OF THE SUPREME COURT to serve in ~~his~~ THE JUSTICE'S place and stead.

2. Five attorney members, none of whom shall reside in the same supervisorial district and not more than three of whom shall be members of the same political party, who are nominated by the board of governors of the state bar of Arizona and who are appointed by the governor subject to confirmation by the senate in the manner prescribed by law.

3. Ten nonattorney members, no more than two of whom shall reside in the same supervisorial district.

~~C.~~ B. At least ninety days ~~prior to~~ BEFORE a term expiring or within twenty-one days of a vacancy occurring for a nonattorney member on the commission for trial court appointments, the member of the board of supervisors from the district in which the vacancy has occurred shall appoint a nominating committee of seven members who reside in the district, not more than four of whom may be from the same political party. The ~~make-up~~ MAKEUP of the committee ~~shall~~, to the extent feasible, SHALL reflect the diversity of the population of the district. Members shall not be attorneys and shall not hold any governmental office, elective or appointive, for profit. The committee shall provide public notice that a vacancy exists and shall solicit, review and forward to the

governor all applications along with the committee's recommendations for appointment. The governor shall appoint two persons from each supervisorial district who shall not be of the same political party, subject to confirmation by the senate in the manner prescribed by law.

~~D.~~ C. In making or confirming appointments to trial court commissions, the governor, the senate and the state bar shall endeavor to see that the commission reflects the diversity of the county's population.

~~E.~~ D. Members of the commission shall serve staggered four year terms. ~~, except that initial appointments for the five additional nonattorney members and the two additional attorney members of the commission shall be designated by the governor as follows:~~

~~1. One appointment for a nonattorney member shall be for a one-year term.~~

~~2. Two appointments for nonattorney members shall be for a two-year term.~~

~~3. Two appointments for nonattorney members shall be for a three-year term.~~

~~4. One appointment for an attorney member shall be for a one-year term.~~

~~5. One appointment for an attorney member shall be for a two-year term.~~

~~F.~~ E. Vacancies shall be filled for the unexpired terms in the same manner as the original appointments.

~~G.~~ F. Attorney members of the commission shall have resided in this state and shall have been admitted to practice in this state by the supreme court for at least five years and shall have resided in the supervisorial district from which they are appointed for at least one year. Nonattorney members shall have resided in this state for at least five years, shall have resided in the supervisorial district for at least one year before being nominated and shall not be judges, retired judges ~~nor~~ OR admitted to practice before the supreme court. None of the attorney or nonattorney members of the commission shall hold any governmental office, elective or appointive, for profit and no attorney member is eligible for appointment to any judicial office of this state until one year after membership in the commission terminates.

~~H.~~ G. No person other than the chief justice shall serve at the same time as a member of more than one judicial appointment commission.



1           ~~I.~~ H. The commission shall submit the names of not less  
2 than three individuals for nomination for the office of ~~the~~  
3 superior court judge pursuant to section 37 of this article.

4           ~~J.~~ I. ~~Prior to~~ BEFORE making recommendations to the  
5 governor, the commission shall conduct investigations, hold  
6 public hearings and take public testimony. An executive session  
7 as prescribed by rule may be held upon a two-thirds vote of the  
8 members of the commission in a public hearing. Final decisions  
9 as to recommendations shall be made without regard to political  
10 affiliation in an impartial and objective manner. The  
11 commission shall consider the diversity of the county's  
12 population and the geographical distribution of the residences  
13 of the judges throughout the county, however the primary  
14 consideration shall be merit. Voting shall be in a public  
15 hearing. The expenses of meetings of the commission and the  
16 attendance of members thereof for travel and subsistence shall  
17 be paid from the general fund of the state as state officers are  
18 paid, upon claims approved by the chairman.

19           ~~K.~~ J. After public hearings the supreme court shall  
20 adopt rules of procedure for the commission on trial court  
21 appointments.

22           ~~L. The members of the commission who were appointed~~  
23 ~~pursuant to section 36 of this article prior to the effective~~  
24 ~~date of this section may continue to serve until the expiration~~  
25 ~~of their normal terms. All subsequent appointments shall be~~  
26 ~~made as prescribed by this section.~~

27           2. The Secretary of State shall submit this proposition to the voters  
28 at the next general election as provided by article XXI, Constitution of  
29 Arizona.